

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

**WEST VIRGINIA HIGHLANDS CONSERVANCY,
APPALACHIAN VOICES and
SIERRA CLUB**

Plaintiffs,

v.

Civil Action No. 3:19-0573

LEXINGTON COAL COMPANY, LLC,

Defendant.

**DEFENDANT LEXINGTON COAL COMPANY LLC'S FEBURARY 2023 STATUS
REPORT**

Defendant Lexington Coal Company, LLC (“Lexington Coal”), by and through counsel provides the following *Defendant Lexington Coal Company LLC’s February 2023 Status Report* to apprise the Court of Lexington Coal’s efforts to bring the subject surface mining sites into compliance with the Court’s prior Orders as follows:

I. BACKGROUND

The March 16th, 2022, Order required, amongst other items, that the “Defendant must submit monthly reports to both this Court and Plaintiffs describing the process and the plan moving forward.” EFC No. 70. On August 15th, 2022, Lexington Coal submitted a Status Report. ECF No. 83. On September 6th, 2022, Lexington Coal filed a Motion to Purge Contempt which included Lexington Coal’s Remediation Plan that contained the current status and described the process moving forward in order to comply with this Court’s prior Orders. ECF No. 88 and 88-1. In October, Lexington Coal submitted the October Status Report. ECF. No. 93. On November 30th, 2022, Lexington submitted the Nov. Status Report., ECF No. 94.

On December 7th, 2022, this Court directed the Defendant to 1) produce the results of ongoing monitoring, 2) describe how this monitoring will be performed moving forward, 3) explain how monitoring results have been used to indicate treatment efficacy and inform modifications to the proposed plan thus far and inform the Court of any pending and anticipated permit filings involved in implementing the remediation plan.” Order, ECF, 95. On December 27th. 2022 Lexington Coal filed its *December Status Report*. ECF, 96. On January 18th, 2023, the Plaintiffs filed its Response to the Court’s December 7, 2022, Order and to the December Status Report. ECF, 97.

Below is a summary of the Lexington Coal’s progress towards compliance with CWA and SMCRA and a summary addressing the Courts recent directives. For more detailed information regarding the directives, the treatment plan milestones and other detailed information see the Feburary Monthly Update Report on the Treatment Plan, **Ex. 1**, Status of Monitoring Table and GANTT Chart, **Ex. 2**.

II. STATUS UPDATE

A. White Flame Surface Mine (Outlets 005, 012, 031, 045, 047) WV NPDES 1020579.

NPDES Modification No. 12/WV1020579 has been submitted and approved at White Flame #10 envisions the construction of three bio-chemical reactors that will treat elevated selenium levels. White Flame met with AEP engineer on January 19th, 2023, and the AEP engineer determined the location to set the substation. Also, due to the proximity of the airport (“Airport”), AEP will bury the power line to the substation. The power line from the substation is 2.75 miles. White Flame has received three bids for this construction. From this main feed, Lexington can run sub-feeds to energize infrastructure needed for the three BCR’s. Three piles of additional bioreactor material have been mixed awaiting additional ordered compost to complete the bioreactor mixture. The leveling drain that adjusts bioreactor flow has been installed, and the containment structure for the bioreactor has been completed.

1. East BCR (outlets 031). The East BCR was modified and approved by WVDEP in Modification 12 associated with Revision 16. The Bioreactor is now constructed. Work is ongoing to install the piping. On site organic media has been delivered and stored for installation. Lexington Coal has crews continuing to weld pipe on-site for installation in the East BCR. Lexington personnel has developed a tracking system for daily pipe welding. Eight thousand feet of pipe needs to be welded. To date, four thousand feet of pipe has been welded. Lexington Coal believes that completion of the pipe welding will occur within the next couple of weeks. Crews from both Lexington and contractor, S&E, are continuing work on the East BCR. Electric feed from the airport will energize the East, South, and North BCRs. The media on site is being placed within the operational cells; the lines are being welded and electric from the Airport substation will be completed. As each subcomponent is completed, similar implementation will occur at each BCR.
2. South BCR (outlets 045, 047). The South BCR was modified and approved by WVDEP in Modification 12 associated with Revision 16. Earthwork has been initiated. Some powerlines are in place to the site. AEP has agreed that Lexington Coal can tie into the AEP's existing power feed, with modification, located at the Airport. Lexington Coal can run sub-feeds to energize infrastructure needed for the three BCR's. Electric feed from the Airport will energize the East, South, and North BCRs. The media on site is being placed within the operational cells; the pipes are being welded and electric from the Airport substation will be completed. As each subcomponent is completed, similar implementation will occur at each BCR.

3. North BCR (outlets 005,012). The location and design of the North BCR has been flagged in the field to facilitate construction of earthwork on the North BCR. AEP's transformer installation will be required for power activation. Electric feed from the Airport will energize the East, South, and North BCRs. The media on site is being placed within the operational cells; the pipes are being welded and electric from the Airport substation will be completed. As each subcomponent is completed, similar implementation will occur at each BCR.

**B. Low Gap Surface Mine (Outlets 002, 017, 019, 024, 059) WV NPDES Permit
WV1016228**

The West BCR could treat the selenium water from all outlets on S502099, however, repairs are needed due to vandalism. The West BCR has been constructed and the media and pipes have been installed. The transformer, behind the golf course, will provide power to the pumps that has been activated. A BFD drive needs replaced. State Electric has a BFD drive available. Lexington coal is purchasing this drive. The pump motor is being rebuilt by White's Armature. Currently, a substantial tear has been discovered in the liner of the Collection Pond. The liner is scheduled to be patched next week. Lexington is estimating that the repairs will be made and the West BCR will be activated in February 2023. If water samples show that compliance with selenium limits cannot be maintained with on BCR, Lexington will immediately install, complete, and activate the East BCR. **The West BCR is now functional and treating water.** The BCR water samples from West BCR was completed on February 15th, 2023, which shows testing results for selenium, total recoverable, dissolved and specific conductivity. See *February Monthly Report, Ex. 1.*

C. Conductivity/White Flame and Low Gap

The assumption regarding higher concentrations of conductivity in the underdrain water was correct however based upon sampling there was little to no surface water flow reporting to the groin ditches. Therefore, because there is little surface water flow reporting from the groin ditches the Plan has been modified so that any flow to the Pond, including flow from the underdrain, will be treated for selenium at the BCR then pumped or gravity feed to a retention pond. The treated water will be used or released into the stream during a high flow event. Lexington is proposing to intercept the surface water before it reaches the valley fill. This intercepted surface water will be tested and if acceptable for selenium and conductivity will then bypass the currently active pond and released into the stream at a point close to the current release point. The streams below the mine sites would be restored based on a natural stream design. Lexington coal is proposing utilizing the benthic assessment sites (“BAS”) set by the WVDEP to assess success based upon narrative quality standards. Lexington coal will develop site specific engineering plans and environmental assessments.

Also, Lexington Coal is working with the Mingo County Redevelopment Authority to develop land use plans adjacent to the Airport that will incorporate existing and proposed infrastructure and utilize water availability, as needed, from the collection ponds that have been treated for selenium. Additionally, Lexington Coal is in discussions with Bella Vista, Inc. (“Bella Vista”), the operator of the Twisted Gun Golf Course, regarding the Golf Course’s irrigation needs.

III. CONCLUSION

As discussed in the February Status Report and attached documents, Lexington Coal is making progress and is working diligently to comply with this Court's Orders. Other than changes discussed in the February Status Report, all other items remain unchanged in the Remediation Plan. ECF No. 88-1.

/s/ W. Howard Sammons, II Esq.

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AT HUNTINGTON**

**HIGHLANDS CONSERVANCY,
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Plaintiffs,**

CIVIL ACTION NO. 3:10-00573

v.

**LEXINGTON COAL COMPANY, LLC,
Defendant**

CERTIFICATE OF SERVICE

I hereby certify that on January 27th, 2023, the foregoing Defendant *Lexington Coal Company LLC'S Feburary Status Report* was electronically filed via the CM/ECF system, which will send notification of such filing to all parties receiving ECF Notices in this matter.

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Respectfully Submitted,

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